

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL RAPAPORT and MICHAEL	:	
DAVID PRODUCTIONS, INC.,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	Case No. 1:18-CV-08783
	:	
BARSTOOL SPORTS, INC., ADAM SMITH,	:	
KEVIN CLANCY, ERIC NATHAN and	:	<b>DECLARATION OF RENA UNGER</b>
DAVID PORTNOY,	:	
	:	
Defendants.	:	
	:	
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BARSTOOL SPORTS, INC.,	:	
	:	
Counterclaimant,	:	
	:	
-against-	:	
	:	
MICHAEL RAPAPORT and MICHAEL	:	
DAVID PRODUCTIONS, INC.,	:	
	:	
Cross-Defendants.	:	
	:	
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**DECLARATION OF RENA UNGER**

Pursuant to 28 U.S.C. § 1746, I, Rena Unger, hereby declare as follows:

1. I am over the age of 18 and not a party to this action. I have personal knowledge of the facts set forth herein, which are known by me to be true and correct, and if called as a witness, I could and would competently testify thereto.
2. I declare under penalty of perjury that the foregoing is true and correct.
3. I have over two decades of experience in brand marketing, audio innovation and branded content development.

4. I have led high impact integrated digital and traditional efforts for globally esteemed brands, including Wondery, Interactive Advertising Bureau (“IAB”), SiriusXM, Viacom, L’Oréal Paris, Sony Pictures, Microsoft, Xbox, InBev, Fast Company and U.S. News & World Report.

5. Currently, I am a Marketing Consultant working with major brands in audio to elevate their position in the marketplace with cutting edge content, efficient promotional campaigns, and business strategy, including forming and supporting partnership with platforms and third-party content.

6. I was retained by Plaintiffs’ counsel in this action to provide expert testimony related to 1) audio industry expertise regarding business practices and podcast show evaluation, 2) evaluation methodology of the I AM RAPAPORT: STEREO PODCAST, and 3) growth projections for I AM RAPAPORT: STEREO PODCAST according to the overall industry growth.

7. The Expert Report (“Report”) that I provided to Plaintiffs’ counsel, as well as my Curriculum Vitae, is attached to this Declaration as Attachment 1.

8. My opinions within the Report are based on 1) a review of documents provided to me by Plaintiffs’ counsel, 2) an extensive review of I AM RAPAPORT: STEREO PODCAST’s performance from July 2015 (notably February 2019)-April 2019, 3) independent research, and 4) my 21 years of experience analyzing audio performance, business strategy and projections for future success.

9. My review of the I AM RAPAPORT: STEREO PODCAST’s performance was premised upon average download numbers provided to me by Jordan Winter. This information was provided to me in spreadsheet form. A true and accurate copy of this spreadsheet converted into pdf form is attached to this Declaration as Attachment 2.

10. As I note in my Report, on February 18th 2018, in the span of one day, the I AM RAPAPORT: STEREO PODCAST received tens of thousands of 1-star ratings to drop to an average rating of 4.5 stars to 1.5 stars. A surge of this nature is unheard of in the industry and could not come from organic listener consumption. It is a deliberately driven outlier that is not based on

organic listening and the timing aligns with the smear content featured on the Barstool Sports audio network and the Barstool Sports community social media channels during this time period.

11. Prior the date of Mr. Rapaport's termination, 86% of its recorded Apple ratings for the I AM RAPAPORT: STEREO PODCAST were 5 stars, with only 11% being 1 star. In contrast, on the date of Mr. Rapaport' s termination, the podcast was flooded with thousands of ratings, 95% of which were 1 star.

12. My knowledge of the timeline of the I AM RAPAPORT: STEREO PODCAST's ratings and reviews comes from my review of a document provided to me by Mr. Winter that he purported was authored by Chartable and contained complete and accurate representation of the ratings with reviews for the I Am Rapaport: Stereo Podcast received on iTunes / Apple Podcast. A true and accurate copy of this spreadsheet converted into pdf form is attached to this Declaration as Attachment 3.

13. It is my expert opinion that as a direct result of this drop in ratings and influx of negative reviews, the I AM RAPAPORT: STEREO PODCAST suffered a significant drop in average downloads per episode.

14. Downloads are the currency on which all advertising budgets are allocated and is the industry metric that determines the success of a show from a business ROI (return on investment) perspective.

15. Ratings and reviews are also an important measurement for talent compensation. In the B2B model, ratings and reviews indicate success potential for new shows just gaining traction on listener downloads. Based upon my experience, shows with a 5-star rating and positive reviews, even with low download performance, are more attractive to podcast networks and offer more long term potential in comparison to 3-star rating shows with mixed reviews and above average download performance. A show with less than a 3-star rating is unlikely to be picked up by a talent platform or be sought after by advertisers.

16. Prior to the February 18, 2018 ratings bomb, the I AM RAPAPORT: STEREO PODCAST had successfully maintained an annual rate of growth (67%) well above the industry norm of 11.11%.

17. Based upon my industry advertising experience, the I AM RAPAPORT: STEREO PODCAST should have been able to charge a \$30 CPM (cost per thousand downloads) prior to the ratings bomb. This number is substantiated by the documents provided to me by Plaintiffs' counsel, which shows that the I AM RAPAPORT: STEREO PODCAST successfully sold advertisements both at and above this rate. Examples of these documents are attached to this declaration as Attachments 4-5. Among these documents is a rate card evidencing that Mr. Rapaport was sold at this rate by Barstool Sports (attached to this declaration as Attachment 5).

18. Based upon my industry advertising expertise, the average downloads for the I AM RAPAPORT: STEREO PODCAST prior to February 2018 ratings bomb, the rate of growth of the I AM RAPAPORT: STEREO PODCAST prior to February 2018 ratings bomb, and the rate that advertisers were willing to pay for placement on the I AM RAPAPORT: STEREO PODCAST, I was able to calculate in my Report a conservative estimate of the annual revenue that the I AM RAPAPORT: STEREO PODCAST would have been able to generate in 2018 and 2019 if not for the February 2018 ratings bomb.

19. For the purposes of my calculations, I conservatively used the industry rate of 11.11% as opposed to the 67% growth rather than the I AM RAPAPORT: STEREO PODCAST was experiencing. Had I used the 67% growth rather, the projected annual revenue for the I AM RAPAPORT: STEREO PODCAST would have been substantially larger.

20. Based upon my calculations, the I AM RAPAPORT: STEREO PODCAST would have been able to generate an annual revenue of \$1,996,698.60 at the date of Michael Rapaport's termination from Barstool Sports and \$2,465,017 at the time of the original filing of my report (November 11, 2019).

21. I also noted in my report that it will be difficult for the I AM RAPAPORT: STEREO PODCAST to recover its earning potential going forward because of its placement on Luminary.

22. Luminary is a new and unique model to the podcasts industry. Unlike the bulk of the podcasting space that makes its content available to listeners for free and generates revenue off of ad sales, Luminary's model is based upon paid subscriptions.

23. One of the greatest value propositions to podcast listeners is that they are available for free. Putting content behind a paywall at this stage is an interesting shift that will require a high volume of top celebrity hosted podcasts to not only be successful in luring listeners to the platform, but to also match the value of paid monthly subscriptions against an arsenal of nearly a million free podcasts. At this stage Luminary is not considered a top tier player yet as they are still growing and are too new.

24. By leaving the free space available to a reported over 144,000,000 people 12+, the I AM RAPAPORT: STEREO PODCAST is now only available to an audience around 50,000 paying subscribers.

25. At its peak, the I AM RAPAPORT: STEREO PODCAST achieved a monthly all time download average of 157,693. That achievement is not possible as it is three times the Luminary total audience.

26. By being locked behind a paywall for years going forward, the I AM RAPAPORT: STEREO PODCAST will require significant resources and time to rebuild the show audience back to the level of 157,693 average monthly all time downloads.

27. I also discussed in my Report my direct experience with Mr. Rapaport prior to working on my Report. I met Mr. Rapaport in September 2015 when I produced the industry's first ever Podcast Upfront. The Podcast Upfront is an event that allows for talent platforms to showcase their network and pitch their content to advertisers. To qualify for the event, a talent platform must meet various requirements, including the number shows on its platform and total viewership.

28. Luminary for example would not be invited to this event because it is a subscription based platform that is not advertiser supported. Independent podcasts shows are also not invited to present.

29. The stage is limited to between 8-14 presenting companies depending on the year. Past presenters include top leaders in the industry: NPR, iHeart Radio, ESPN, Pandora, Midroll Stitcher, WNYC, CBS Play.it and Westwood One.

30. Individual shows are provided limited time within the presenting sponsor company's total session which is 20 minutes per company. Because of the limited time, the presenting sponsor companies are very selective about the hosts they invite. Shows and hosts featured must have significant audience value and appeal to the media buying community with advertising budgets to spend on digital audio podcasts shows.

31. In 2015, the I AM RAPAPORT: STEREO PODCAST was showcased as premium talent driven content by CBS Radio Play.it. The CBS Radio Play.it team introduced me to Mr. Rapaport as their "shining sports and male lifestyle star."

32. As the producer of the event my role was to help "call the show" by keeping presentation sessions on time and by guiding talent and presenters to the stage. I spent a considerable amount of time with Mr. Rapaport and his team during the event backstage. Mr. Rapaport was genuine and warm to all of his fellow podcast hosts. Many were fans of his work in television and film. Cari Champion, who was showcased by ESPN, noted Mr. Rapaport as "one of the best in the business." In the feedback received from attendees, Mr. Rapaport was regarded as a highlight of the event.

33. I served as the producer of the industry's second Podcast Upfront on September 7, 2016. IAB was tasked with doubling the audience and bringing more star power to the event, as well as building out content. Because of Mr. Rapaport's popularity the previous year and hosts and advertisers, he was invited to be the Interactive Advertising Bureau ("IAB")'s host for the second Podcast Upfront. The host is not paid for his services but works with industry leaders in the spirit of evangelizing the value of their medium, in this case podcasts. Prior to extending the invite, IAB consulted high level executives at Performance Bridge (now Veritone) and AdResults, who were in attendance the previous year.

34. For reference, Veritone and AdResults are two of the top 3 advertising agencies globally. These executives determined that Mr. Rapaport would be a successful host and someone they would be happy to work with.

35. Mr. Rapaport was gracious enough to support the second IAB Podcast Upfront in September 2016 as the afternoon host, with Alix and Lulu from Invisibilia hosting the morning sessions. Mr. Rapaport was a major contributor in holding the audience through hours of presentations which started at 9 a.m. and ran through 6 p.m. Mr. Rapaport was again genuine and warm to all of the special guests back stage.

36. Mr. Rapaport won over the audience as well, comprised of 200 audio media buyers and brands with audio revenue budgets. Nearly everyone I spoke to asked if I could introduce them to Mr. Rapaport and included comments that they had clients in mind who would want to buy advertising spots in his show.

37. By the time of the second Podcast Upfront, the I AM RAPAPORT: STEREO PODCAST had already achieved successful growth in both show downloads and ratings and reviews. After hosting the event, Mr. Rapaport personally won over the confidence and interest of key decision makers in the media buying community based on his stature, content contributions, and professionalism in the industry.

38. Mr. Rapaport, as I directly experienced, was considered within the industry to be a high caliber and heavily sought after celebrity podcast host with listeners. With this stature, Mr. Rapaport would have been extremely marketable advertisers and talent platforms as of September 2016.

39. For Mr. Rapaport to have difficulty finding advertisers less than two years after this event is unexplainable by organic means.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 28, 2020.



Rena Unger